

RECEIPT NUMBER

912972

28.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

MAGISTRATE JUDGE CAPEL,

CO/OP OPTICAL VISION DESIGNS, assumed name for  
COOPERATIVE OPTICAL SERVICES, INC.,  
A Michigan corporation,

Plaintiff,

-VS-

JUDGE : Rosen, Gerald E.  
DECK : S. Division Civil Deck  
DATE : 08/30/2004 @ 13:32:27  
CASE NUMBER : 2:04CV73369  
CMP CO/OP OPTICAL V. LOCAL 84932  
(KC)

LOCAL 84932, UNITED OPTICAL WORKERS, of Detroit, Michigan, affiliated  
with the INTERNATIONAL UNION of ELECTRICAL WORKERS-  
COMMUNICATION WORKERS OF AMERICA, AFL-CIO,

Defendants.

ACTION TO VACATE ARBITRATION AWARD

NOW COMES the plaintiff, by and through its attorney, William S. Sterg, and  
who files this action to vacate an arbitration award for the following reasons:

1. Jurisdiction in this Court arises due to the fact that this action is brought pursuant to the Federal Arbitration Act, specifically 9 USC §10, that allows a Court to vacate an arbitration award upon the application of any party to the arbitration for various reasons. Jurisdiction also arises as this action requests a finding that a decision of an arbitrator concerning the terms of a Collective Bargaining Agreement violated the terms and spirit of the National Labor Relations Act, specifically 29 USC 158(d).
2. The plaintiff is an employer engaged in providing optical eye care as well as the manufacturing and retail sales of optical wear.
3. The defendant herein is a union representing employees of the plaintiff.
4. The arbitration in this case arose due to a dispute concerning the provisions of the Collective Bargaining Agreement dated May 15, 2002 between the plaintiff and

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EAST DIST. MICH.  
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defendant when the plaintiff in 2003 transferred employees to various retail establishments without posting the positions.

5. The defendant union objected to the transfers and filed a grievance that was denied by the plaintiff. The basis for the denial by the plaintiff was the contention that the Collective Bargaining Agreement did not prohibit the unilateral transfer of employees and therefore, the right to unilaterally transfer employees from one location to another was a right reserved to management pursuant to ARTICLE XVI, Section 1 of the Collective Bargaining Agreement that states that the "usual and customary rights of management not specifically modified or abridged by the terms of this Agreement remain the rights of management".

6. An additional reason that the plaintiff denied the grievance was that the union during the earliest stage of the grievance hearing, right up to the arbitration that is the subject of this suit, refused to disclose the identities of individual employees who claimed that they were aggrieved pursuant to the right given to the plaintiff under ARTICLE XII, Section II of the Collective Bargaining Agreement. The union steward who did appear refused to disclose the identities of employees who objected to the transfers so that the concerns of those employees could have been addressed.

7. Pursuant to the terms of the Collective Bargaining Agreement, the defendant on December 31, 2003 filed a Demand for Arbitration with the American Arbitration Association.

8. A hearing was held at the American Arbitration Association on June 30, 2004 and a decision was issued by the arbitrator on August 20, 2004 finding in favor of the defendants and ordering that the employees be returned to their earlier stores and that any

costs incurred by the aggrieved employees be reimbursed by the plaintiff to the employees.

9. The plaintiff files this action as it contends that the arbitration award should be vacated pursuant to 9 USC §10(a)(1) as the award was procured by undue means when the arbitrator allowed the union to produce parol evidence concerning prior contracts and negotiations that led to the present Collective Bargaining Agreement in order to contradict the unambiguous Collective Bargaining Agreement in support of the union contention that the Collective Bargaining Agreement prohibited the unilateral transfer of employees to other locations even though such language was not explicitly contained in the Collective Bargaining Agreement.

10. The plaintiff files this action as it contends that the arbitration award should be vacated pursuant to 9 USC §10(a)(1) as the award was procured by undue means when the company was "blindsided" as the union was allowed to produce witnesses of employees who claimed that they were objecting to the unilateral transfer of employees when the plaintiff demanded to know the identities and exact objections of all such employees at the earlier stage of the grievance process so that such concerns could have been addressed and perhaps resolved before the arbitration hearing.

11. The plaintiff contends that the arbitration award should be vacated pursuant to the terms of 9 USC §10(a)(3) which allows vacation of an arbitration award due to the misbehavior of the arbitrator when the rights of any party have been prejudiced when the arbitrator allowed the union to produce parol evidence concerning prior contracts and negotiations that led to the present Collective Bargaining Agreement in order to contradict the unambiguous Collective Bargaining Agreement in support of the union

contention that the Collective Bargaining Agreement prohibited the unilateral transfer of employees to other locations even though such action was not explicitly prohibited pursuant to the terms of the Collective Bargaining Agreement.

12. The plaintiff contends that the arbitration award should be vacated pursuant to the terms of 9 USC §10(a)(3) which allows vacation of an arbitration award due to the misbehavior of the arbitrator when the rights of any party have been prejudiced when the company was "blindsided" when the union was allowed to produce witnesses of employees who claimed that they were objecting to the unilateral transfer of employees when the plaintiff demanded to know the identities and exact objections of all such employees at the earlier stage of the grievance process so that such concerns could have been addressed before the arbitration hearing.

13. The plaintiff contends that the arbitration award should be vacated pursuant to the terms of 9 USC §10(a)(1),(3) & (4) where the arbitrator exceeded his powers by allowing the parol evidence concerning prior contracts and negotiations that led to the present Collective Bargaining Agreement to contradict the unambiguous terms of the Collective Bargaining Agreement of May 15, 2002 that did not prohibit the unilateral transfer of employees from one location to another when the agreement itself specifically stated that it was not to be modified pursuant to the terms of ARTICLE XXXVIII unless a specific procedure was followed and due to the fact that the Collective Bargaining Agreement in ARTICLE XII, Section 3, that prohibits an arbitrator from revising any of the terms of the Collective Bargaining Agreement.

14. There was no finding that the Collective Bargaining Agreement was ambiguous on the issue involved and therefore, it was improper to allow in the introduction of parol evidence.

15. The plaintiff further contends that even if the arbitrator would have made a finding that the Collective Bargaining Agreement was ambiguous on the issue of the unilateral transfer of employees to justify the introduction of parol evidence, that the defendant did not meet its burden of proof to show the intent of the parties included a prohibition on the unilateral transfer of employees from one location to another.

16. The plaintiff contends that the arbitration award should be vacated pursuant to the terms of 9 USC §10(a)(4) where the arbitrator exceeded his powers by allowing aggrieved employees to testify when the plaintiff demanded at earlier stages to know the names of the aggrieved employees so that their specific concerns could have been addressed at the earlier stage of the grievance process making the arbitration unnecessary.

17. The arbitration award should be vacated as the award is in conflict with federal labor policy as embodied in the National Labor Relations Act and is therefore in conflict with public policy, specifically 29 USC 158(d) which supports avoidance of labor strife and promotes peace in the labor arena by prohibiting a party to a collective bargaining agreement from terminating or modifying a collective bargaining agreement unless the party desiring the modification or termination follows a specific protocol as outlined in the statute.

18. The plaintiff is requesting an order staying the arbitration award until such time as the issues raised herein are addressed by the Court.

## CIVIL COVER SHEET

COUNTY IN WHICH THIS ACTION AROSE:

WAYNE

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

## I. (a) PLAINTIFFS

CO/OP OPTICAL VISION DESIGNS, assumed name for COOPERATIVE OPTICAL SERVICES, INC.

(b) County of Residence of First Listed

Wayne

## DEFENDANT

LOCAL 84932, UNITED OPTICAL WORKERS OF DETROIT

GERALD ROSEN

County of Residence of First Listed

Wayne

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

William S. Stern (P27396)  
24750 Lahser  
Southfield, MI 48034  
248-353-9400

Attorneys (If Known)

Donald S. Stern, JUDGE CAPEL,  
17117 W. 9 Mile Road, Suite 825  
Southfield, MI 48075  
248-559-5379

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item 111)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☒ 4 ☐ 4
- Citizen of Another ☐ 2 ☐ 2 Incorporated and Principal of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment <input checked="" type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault Libel And Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21: 681 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input checked="" type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multi district Litigation
- ☐ 7 Judge from Appeal to District Magistrate

## VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

9USC§10 - Vacation of arbitration award  
29USC§158(d) - National Labor Relations Act

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

\$DEMAND

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) (See Instructions):  
IF ANY

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD



PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes  
☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes  
☒ No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes :

\_\_\_\_\_

\_\_\_\_\_